

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2003-000382-001 DT

10/07/2003

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED:_____

JODY MASSEY

JODY MASSEY
615 S WILLIAMS ST #114
MESA AZ 85204

v.

FRANCINE ALLRED (001)

SCOTT M CLARK

MESA CITY COURT
REMAND DESK-LCA-CCC

MINUTE ENTRY

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This appeal from an order on April 2, 2003, continuing an Injunction Against Harassment after a hearing has been under advisement. This Court has considered and reviewed the record from the Mesa City Court, and the memoranda submitted by Appellant, Francine Allred through her counsel.

A Petition for Injunction Against Harassment was granted by the trial court on March 5, 2003. Appellant, Francine Allred and Appellee, Jody Massey are neighbors living in the same apartment complex in Mesa. Allred is the complex manager. Appellant requested a hearing on the Injunction Against Harassment and that hearing was held on March 27, 2003. At the conclusion of the hearing, the trial court continued the Injunction Against Harassment and modified it by removing Massey's children's names from the injunction. The Judge further ordered and concluded that Allred may contact Massey's spouse regarding any transaction of business concerning the rental of the apartment in which Massey resided (The Massey family has since moved). Appellant filed a timely Notice of Appeal in this case.

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The first issue raised by Appellant concerns whether a statutory basis exists for the issuance of the Injunction Against Harassment. A.R.S. Section 12-1809(E) provides in pertinent part:

"...If the court finds reasonable evidence of harassment of the plaintiff by the defendant during the year preceding the filing of the petition or that good cause exists to believe that great or irreparable harm would result to the plaintiff if the injunction is not granted before the defendant or the defendant's attorney can be heard in opposition and the court finds specific facts attesting to the plaintiff's efforts....

A.R.S. Section 12-1809 provides in Section R that "harassment" means:

... a series of acts over a period of time that is directed at a specific person and that would cause a reasonable person to be seriously alarmed, annoyed or harassed and the conduct in fact seriously alarms, annoys, or harasses the person and serves no legitimate purpose.

Appellant argues that there is no reasonable evidence of harassment warranting an injunction. Appellee claimed that she has been harassed by the Ed Allred, the brother in law of the management, she has been called names by the Appellant, and she has called the police a couple of times when she resided at Western Sun apartments. The record shows that the judge found that a series of acts did occur during the Massey's stay at Sun Western. The statute clearly provides that the series of acts may occur "over any period of time".¹ The series of acts which occurred August 24, 2001 admittedly occurred during one day. The Court finds no error.

The other issues raised by Appellant concern the sufficiency of the evidence to warrant the trial court's conclusions and order continuing the Injunction Against Harassment in full force and effect. When reviewing the sufficiency of the evidence, an appellate court must not reweigh the evidence to determine if it would reach the same conclusion as the original trier of fact.² All evidence will be viewed in a light most favorable to sustaining a verdict and all reasonable inferences will be resolved against the Appellant.³ If conflicts in evidence exists, the appellate court must resolve such conflicts in favor of sustaining the verdict and against the

¹ See A.R.S. Section 12-1809(R).

² *State v. Guerra*, 161 Ariz. 289, 778 P.2d 1185 (1989); *State v. Mincey*, 141 Ariz. 425, 687 P.2d 1180, cert.denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); *State v. Brown*, 125 Ariz. 160, 608 P.2d 299 (1980); *Hollis v. Industrial Commission*, 94 Ariz. 113, 382 P.2d 226 (1963).

³ *State v. Guerra*, supra; *State v. Tison*, 129 Ariz. 546, 633 P.2d 355 (1981), cert.denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).

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Appellant.⁴ An appellate court shall afford great weight to the trial court's assessment of witnesses' credibility and should not reverse the trial court's weighing of evidence absent clear error.⁵ When the sufficiency of evidence to support a judgment is questioned on appeal, an appellate court will examine the record only to determine whether substantial evidence exists to support the action of the lower court.⁶ The Arizona Supreme Court has explained in State v. Tison⁷ that "substantial evidence" means:

More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.⁷

This Court finds that the trial court's determination was not clearly erroneous and was supported by substantial evidence.

IT IS ORDERED affirming the judgment and order of the Mesa City Court in this case.

IT IS FURTHER ORDERED remanding this matter back to the Mesa City Court for all further and future proceedings in this case.

/ s / HONORABLE MICHAEL D. JONES

JUDICIAL OFFICER OF THE SUPERIOR COURT

⁴ State v. Guerra, supra; State v. Girdler, 138 Ariz. 482, 675 P.2d 1301 (1983), cert.denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).

⁵ In re: Estate of Shumway, 197 Ariz. 57, 3 P.3rd 977, review granted in part, opinion vacated in part 9 P.3rd 1062; Ryder v. Leach, 3 Ariz. 129, 77P. 490 (1889).

⁶ Hutcherson v. City of Phoenix, 192 Ariz. 51, 961 P.2d 449 (1998); State v. Guerra, supra; State ex rel. Herman v. Schaffer, 110 Ariz. 91, 515 P.2d 593 (1973).

⁷ SUPRA.

⁷ Id. At 553, 633 P.2d at 362.